IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R. No. 77 of 1995

DATE OF DECISION: 5.7.2007

Regional Computer Centre, Chandigarh

…Applicant

Versus

The Commissioner of Income-tax, Patiala

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. S.K. Mukhi, Advocate,
for the applicant-assessee.

Mr. Sanjiv Bansal, Advocate,
for the respondent-revenue.

JUDGMENT

M.M. KUMAR, J.

At the instance of the applicant-assessee Regional Computer Centre, Chandigarh (for brevity, 'the assessee RCC'), the instant reference has been made under Section 256(1) of the Income-tax Act, 1961 (for brevity, 'the Act'), by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for brevity, 'the Tribunal'). The Tribunal has referred the following questions of law, which are stated to have emerged out of its order dated 31.1.1994, passed in ITA No. 1192/Chd/1988, in respect of the assessment year 1984-85:-

> "1. Whether in the facts and circumstances of the case, the Tribunal is right to hold that the Regional Computer Centre is not a charitable institute of

general public utility, entitled to exemption after assessment year 1983-84, consequent upon simultaneous amendment of section 11 and 2(15) of the Income-tax Act, 1961?

2. Whether in the facts and circumstances of the case, the activities and object of teaching and imparting training in computer science with no profit motive as per memorandum of association, do not qualify for exemption under section 10(22) as "educational institute"?

Facts in brief may first be noticed. The assessee RCC is a Society registered under the Society Registration Act, 1860. The assessee RCC had filed its return on 28.8.1984, for the assessment year 1984-85, showing profit of Rs. 2,84,984/- with the claim of exemption under Sections 11 and 10(22) of the Act. However, the Assessing Officer rejected the claim of the assessee RCC for exemption, vide order dated 27.2.1987, holding that the income of the assessee RCC is taxable. Accordingly, net taxable income of the assessee RCC has been assessed at Rs. 19,64,024/-.

The assessee RCC went in appeal before the CIT (A), who examined the provisions of Section 11(4A) read with 10(22) of the Act and vide order dated 29.8.1988, rejected the plea of the assessee RCC holding that it was not entitled to benefit under Section 11 of the Act because it was carrying on the activity of a computer centre by providing consultancy, taking of projects and imparting training programme with the object of promoting Computer Science. Accordingly, it has been charging fee for that purpose. The CIT (A)

further held that the benefit of Section 10(22) of the Act is also not available to the assessee RCC, inasmuch as, consultancy was a major activity of the assessee RCC and training programme represented only a small portion of its activities. It was still further held that the computer centre run by the assessee RCC could not be termed as an educational institution.

On further appeal preferred by the assessee RCC, the Tribunal while rejecting the ground of exemption under Section 11(4) of the Act observed as under:-

> "7. We have carefully considered the rival submissions as also the facts on record. Section 11(4) of the Act contemplates that for the purposes of section 11, "property held under trust" would include a business undertaking so held. The assessee is being treated as a trust because of the business undertaking carried on by it. Otherwise it would not be a trust at all. In our opinion, the assessee is main and predominant object was to promote development and progress of Electronic Data Processing etc. and whether profit motive was there or not, the fact remains that the assessee has been carrying on business and by virtue of section 11(4) of the Act had to be deemed as a trust. The question to be decided is whether the insertion of sub-section (4A) w.e.f. 1.4.1984 has brought about any qualitative change in the situation or not. By going through the speech the mover of the Bill and by the plain reading of Section 11 (4A), it is clear to us that the purpose of the insertion of

Section 11(4A) was to bring business income of the trusts to tax. Certain exceptions were, however, carved out.

The first exception was in respect of public religious trusts engaged in the business of printing and/or publication of books. This obviously does not cover the case of the assessee because the assessee is neither a public religious trust nor is it engaged in the business of printing and/or publication of books. The second limb of Section 11(4A) is regarding institutions wholly for charitable purposes where the work in connection with the business is mainly carried on by the beneficiaries of the institution. While the purpose of the assessee is no doubt charitable in nature, the work in connection with the business is not mainly carried on by the beneficiaries of the institution. We, therefore, hold that whatever may be the position for the earlier years, the position for assessment year 1984-85 has to be determined in the light of the amendment of section 2 (15) and insertion of Section 11(4A) of the Act. We, therefore, uphold the finding of the learned CIT(A) that the assessee's income is not exempt u/s 11 of the Act. This ground is, therefore, rejected."

With regard to grant of exemption under Section 10(22) of the Act, the Tribunal has further held that one of the objects of the assessee RCC was to impart training but that was not the sole purpose. It was held that major source of income of the assessee

RCC has come from consultancy work. Simply because the users of the services rendered by the assessee RCC were colleges, universities, Government Departments and organizations etc., would not necessarily lead to the conclusion that the assessee RCC was an educational institution existing solely for educational purposes. The Tribunal has recorded further findings that the main purpose of the assessee RCC was to earn profit which fact is fortified from the report of the assessee's compilation according to which after initial stages, the assessee RCC was not only to become self-sufficient but it was also to become profitable. In these circumstances, the Tribunal has also rejected the second claim of the assessee RCC that it is entitled to exemption under Section 10(22) of the Act. The assessee RCC while challenging the order of CIT (A) before the Tribunal had also urged various other grounds including non-taxability of its income under Section 60 of the Act, non-allowance of depreciation allowance while computing total income, treating the interest accrued on grant-in-aid to be a revenue receipt, disallowance of guest house expenses of Rs. 32,672/-, deduction of E.P.F. of Rs. 20,824/-, confirmation of addition of Rs. 8,000/- under the head 'provision made' and of Rs. 20,853/- under the head 'sale of assets', wear and tear and confirmation of levy of interest under Section 217 of the Act. However, in the instant reference we are only concerned with two substantial questions of law which have already been reproduced above.

Mr. S.K. Mukhi, learned counsel for the assessee RCC has claimed that functionally as well as structurally the assessee RCC is manned by Government officers occupying various posts ex-

officio. The first Executive Council is comprised of Officer on Special Duty (Computers), Department of Electronics, New Delhi, Project Director (Semiconductor Complex), Department of Electronics, New Delhi, Joint Secretary, Department of Electronics, New Delhi, Officiating Director (Regional Computer Centre) and Joint Director (Computers), Department of Electronics, New Delhi, Additional Secretary, University Grants Commission, New Delhi, Vice-Chancellor, Panjab University, Chandigarh, Principal, Punjab Engineering College, Chandigarh, Financial Commissioner and Secretary, Irrigation and Power, Government of Punjab, Chandigarh, Deputy Secretary (Finance), Chandigarh Administration, U.T. Chandigarh, Managing Director, Punjab State Industrial Development Corporation Ltd., Chandigarh and three representatives from the State of Haryana were to be nominated. On the basis of the aforementioned constitution of the Executive Council, it has been urged that the assessee RCC is a body which enjoys public character structurally. He has then referred to various purposes by drawing our attention to the objects in the Memorandum of Association, which provides that the assessee RCC is to encourage and promote the development and progress of Electronic Data Processing towards achieving self-reliance in the field of computer sciences and technology and to advance interdisciplinary cooperation amongst scientists, technologist, engineers, administrators and commercial entrepreneurs for the growth of teaching research etc. It further provides for dissemination of knowledge on all aspects of Electronic Data Processing Systems and allied subjects and to stimulate and offer aid for research and development for the benefit of manufacturers and

users of Electronics Data Processing Systems. A number of other objects listed in various clauses (d), (e), (f), (g) and (h) have also been relied upon to show that the Trust is aimed at achieving self-sufficiency in Electronic Data Processing. Learned counsel has then submitted that all the projects undertaken by the assessee RCC are either of the Universities or of various Government institutions. Mr. Mukhi has submitted that the case of the assessee RCC is fully covered by the provisions of Section 11(4A) (b) of the Act as the work is carried on by the beneficiaries of the assessee RCC.

In the backdrop of the aforementioned facts it has also been claimed by Mr. Mukhi that the assessee RCC would be covered by the definition of expression 'charitable purpose' as used by Section 2(15) of the Act and it would qualify for benefits as contemplated under Section 11(4) and 11(4A) of the Act. In support of his submission, learned counsel has placed reliance on a Division Bench judgment of Andhra Pradesh High Court in the case of **Commissioner of Income-tax v. Hyderabad Race Club Charitable Trust, (2003) 262 ITR 194**.

Mr. Sanjiv Bansal, learned counsel for the revenue has vehemently opposed the submissions made by the learned counsel for the assessee RCC. He has submitted that the Tribunal in its order has specifically recorded a finding that 'the assessee RCC has not substantiated how its entire business is carried on mainly by its beneficiaries. A study of its management would show the activities are not carried on mainly by its beneficiaries. Secondly by taking support of section 11(4-A) (b) the assessee has himself admitted that a business was carried on' by the assessee RCC. Therefore, learned

counsel has argued that the assessee RCC would not be entitled to benefits as contemplated by Section 10(22) of the Act, which contemplates exclusion of any income of university or any other institution existing solely for educational purposes and not for purpose of profit. Learned counsel for the revenue has then drawn our attention to the order dated 27.2.1987, passed by the Assessing Officer (at page 16 of the paper book). It has been observed that in order to obtain benefit under Section 10(22) of the Act, the institution must be carrying on one sole activity i.e. promotion of education whereas the assessee RCC indulged in many other activities. The computer training classes is only one of its small activity. It has been recorded that out of total receipts of Rs. 65,66,76,563/-, income by way of training programme at Rs. 3,69,954/- is a negligible fraction, which goes to show that education is not a major object what to say of sole activity. The assessee RCC has itself admitted in the written submissions before the Assessing Officer that consultancy was its major activity. The Assessing Officer also referred to profit and loss account to show that the assessee RCC had earned income from various sources like income from project and CPU hours purchased, F.D.Rs. and data entry etc.

Learned counsel has then argued that the assessee RCC has been enjoying exemption till the assessment year 1983-84 but by virtue of amendment carried in Sections 2(15) and 11(4A) w.e.f. 1.4.1984, the amended provisions of the Act have been rightly applied by the Tribunal in respect of the assessment year 1984-85 and the assessee RCC has lost its earlier charitable character which was qualified for exemption. Learned counsel has pointed out that the

definition of expression 'charitable purpose' was amended by excluding the words 'not involving the carrying on of any activity for profit'. Therefore, it has been submitted that the order of the Tribunal does not suffer from any legal infirmity and the questions framed must be answered in favour of the revenue and against the assessee RCC.

We have thoughtfully considered the submissions made by the learned counsel for the parties and are of the view that the view taken by the Tribunal deserves to be upheld. In order to put the controversy in its proper perspective, it would be apposite to read the provisions of Section 2(15), 10(22), 11(4) and 11(4A) of the Act, which are extracted as under:-

Section 2(15) of the Act [as amended with effect from 1.4.1984]:

"(15) "charitable purpose" includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility;"

Section 10(22) of the Act:

"(22) any income of a university or other educational institution, existing solely for educational purposes and not for purposes of profit;"

Section 11(4) of the Act:

"11(4) For the purposes of this section "property held under trust" includes a business undertaking so held, and where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the Income-tax

Officer shall have power to determine the income of such undertaking in accordance with the provisions of this Act relating to assessment; and where any income so determined is in excess of the income as shown in the accounts of the undertaking, such excess shall be deemed to be applied to purposes other than charitable or religious purposes."

Section 11(4A) of the Act [as inserted with effect from 1.4.1984]

"(4A) Sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) shall not apply in relation to any income, being profits and gains of business, unless-

(a) the business is carried on by a trust wholly for public religious purposes and the business consists of printing and publication of books or publication of books or is of a kind notified by the Central Government in this behalf in the Official Gazette; or

(b) the business is carried on by an institution wholly for charitable purposes and the work in connection with the business is mainly carried on by the beneficiaries of the institution,

and separate books of account are maintained by the trust or institution in respect of such business."

The provisions of Sections 11(4) and 11(4A) of the Act fell for consideration of Hon'ble the Supreme Court in the case of

Assistant Commissioner of Income Tax, Madras v. Thanthi Trust, (2001) 2 SCC 707. Dealing with the controversy relating to the assessment years 1984-85 to 1991-92 and applying the provisions as it existed at that time, which is relevant to the case in hand, their Lordships' observed as under:-

> " 22. Sub-section (4) of Section 11 remains on the statute-book, and it defines property held under trust for the purposes of that section to include a business so held. It then states how such income is to be determined. In other words, if such income is not to be included in the income of the trust, its quantum is to be determined in the manner set out in sub-section (4).

It is true in respect to assessment year 1992-93, the benefits of Section 11 was extended because sub-section (4A) of Section 11 had further undergone change w.e.f. 1.4.1992. However, in respect of the assessment year of 1984-85, which is relevant to the case in hand, the benefit could not be extended.

In the present case, there are categorical findings recorded by the Tribunal that although one of the objects of the assessee RCC was to impart computer training but that was not its sole purpose. It has further been found that the major source of income as reflected in the statement of profit and loss account was from consultancy work. The assessee RCC was not considered to be existing solely for educational purposes simply because it s services were used by colleges, universities, Government departments or other public sector organizations. That alone would not bring its case within the parameters of Section 11(4A)(b) of the Act. The Tribunal

has placed reliance on a report submitted by the assessee RCC itself, which provided that the assessee RCC was not only to become self-sufficient but it was also to become profitable. When the aforementioned findings are viewed in the light of bare perusal of Sections 2(15), 10(22), 11(4) and 11(4A) of the Act as well as in the light of the judgment of Hon'ble the Supreme Court in the case of Thanthi Trust (supra) then it becomes clear that the benefit of Section 11 of the Act could not be availed in respect of any income being profit and gains of business unless it is proved that the business was being carried on by a trust wholly for public religious purposes and the business consisted of printing and publication of books or publication of books or is of a kind notified by the Central Government in this behalf in the Official Gazette. It further required that separate books of account were maintained by the trust or institution in respect of such business and that the business was carried on by an institution wholly for charitable purposes and the work in connection with the business was mainly carried on by the beneficiaries of the institution.

The argument of Mr. Mukhi that the business was being carried on by the beneficiaries of the assessee RCC is liable to be rejected because the requirement of sub-section (4A)(b) of Section 11 is not that the business is carried on for the benefits of the institution but it is required to be carried on by the beneficiaries of the institution. The beneficiaries like the Panjab University, Punjab Engineering College, various Government departments are not carrying on the business merely because the officers from those departments are ex officio members of the Executive Council. Even

otherwise the argument over looks the requirement of Section 11(4A) (b) of the Act that the business is carried on wholly for charitable purposes. The findings of fact are also against the assessee RCC that it is not a charitable institution. Therefore, the argument does not deserve acceptance.

In view of the discussion above, the questions raised are decided against the assessee RCC and in favour of the revenue.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
July 5, 2007 **JUDGE**
Pkapoor

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